Sam Bennion and Earl Garr, d/b/a Hillsdale Inn, a Partnership *and* Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO. Cases 20–CA–16453 and 20–CA–16476

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 29 October 1982 Administrative Law Judge Michael D. Stevenson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a memorandum in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Sam Bennion and Earl Garr, d/b/a Hillsdale Inn, a Partnership, San Mateo, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Retroactively give effect to the provisions of the two collective-bargaining agreements in effect and make its employees whole for any losses of wages or other benefits suffered by reason of Respondent's failure to abide by the terms of those contracts, with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977)."[3]

3. Substitute the attached notice for that of the Administrative Law Judge.

[3] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge found, and we agree, that Respondent's co-managers, the Robards, possessed apparent authority to authorize the San Mateo Hotel and Restaurant Owners Association (Association) to bargain on behalf of Respondent, and that the Association had the apparent authority to bind Respondent to collective-bargaining agreements negotiated by the Association. We further agree that Respondent ratified the actions of its co-managers and the Association. Although Respondent informed the Association in February and April 1977 that no one except Bennion, Respondent's owner, had the authority to authorize the Association as Respondent's bargaining representative, Respondent nevertheless allowed a situation to continue for some 3 years in which Respondent's co-managers, *inter alia*, signed authorizations for the Association to bargain on behalf of Respondent, participated in negotiations conducted by the Association, observed the terms and conditions of collective-bargaining agreements negotiated by the Association, and used a lawyer recommended by the Association to negotiate a settlement agreement with one of the Unions here involved (with Respondent's owner's knowledge). It is unreasonable and strains credulity to assume that Respondent was wholly unaware of this course of conduct for such a long period of time—particularly when Respondent's owner was aware that the co-managers had *twice* disregarded his instructions to cease dealing with the Association. While we, unlike the Administrative Law Judge, find nothing ambiguous with respect to the co-managers' lack of authority in Respondent's letter of 25 April 1977, we fully agree with the Administrative Law Judge's conclusion that Respondent's initial actions in 1977 to disavow the co-managers' authority were diluted and ultimately overshadowed by its course of conduct over the subsequent 3 years.

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to honor and abide by the 1980–83 collective-bargaining agreements negotiated by San Mateo Hotel and Restaurant Owners Association and Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO, and Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL make all employees whole by paying all pension, health and welfare, and other trust fund contributions which should have been paid, as provided in the aforementioned collective-bargaining agreements, but were not paid by us because of our unlawful repudiation of the two collective-bargaining agreements referred to above.

WE WILL forthwith honor and abide by the 1980–83 collective-bargaining agreement with Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL give retroactive effect to the provisions of the agreement with Local 856 and make whole all employees covered by it for any losses of wages or other benefits they suffered because we failed to give effect to that agreement, with interest.

WE WILL forthwith honor and abide by the 1980–83 collective-bargaining agreement with Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO.

WE WILL give retroactive effect to the provisions of the agreement with Local 340 and make whole all employees covered by it for any losses of wages or other benefits they suffered because we failed to give effect to that agreement, with interest.

SAM BENNION AND EARL GARR D/B/A HILLSDALE INN, A PARTNERSHIP

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge: This case was tried before me in San Francisco, California, on May 4 and 5 and June 2, 1982,[1] pursuant to an order consolidating cases and consolidated complaint and notice of hearing issued by the Regional Director for Region 20 of the National Labor Board on September 28, which is based on charges filed by Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Case 20–CA–16453), and by Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant and Bartenders International Union, AFL–CIO (Case 20–CA–16476), herein called Local 856 and Local 340, respectively, on July 22 (Case 20–CA–16453) and 29 (Case 20–CA–16476), 1981. The complaint alleges that Sam Bennion and Earl Garr, d/b/a Hillsdale Inn, a Partnership (herein called Respondent) have engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act.)

Issues

Whether Respondent's managers had real or apparent authority to authorize a multiemployer unit to negotiate separate collective-bargaining agreements with the Charging Party Union; and, if so, whether Respondent has repudiated or otherwise refused to abide by the terms and conditions of said agreements in violation of Section 8(a)(1) and (5) of the Act.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, Culinary Workers, Local 340, and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a partnership in the motel and restaurant business located in San Mateo, California. It further admits that during the calendar year 1980 in the course and conduct of its business its gross revenues exceeded $500,000, and that annually it purchases goods and materials valued in excess of $5,000 which goods and materials originated outside the State of California. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.[2]

[1] All dates herein refer to 1980 unless otherwise indicated.

[2] The interstate commerce element was denied in Respondent's answer, but admitted at the hearing.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. General background

In 1970 or 1971, Sam Bennion purchased 70 percent of Respondent while his partner and son-in-law, Earl Garr, purchased 30 percent. For the first few years, Bennion was a silent partner and Garr was a managing partner on the premises. In late 1975, Bennion took over active management of the hotel but conducted operations through a series of resident managers while he, Bennion, continued to reside out of state. Bennion visited the premises from time to time and received by mail periodic reports concerning the financial condition of the business.

Bennion, a lengthy witness at the hearing, hired various persons as resident managers, one of whom was a man named Wingo. This occurred in April 1976; Wingo was subsequently fired in September 1976 for being drunk on the job. Bennion replaced Wingo with a temporary manager named Rand, an elderly man who remained at Respondent for only a short while. Then in March 1977 Bennion hired a new resident manager Robert Robards; his wife, Nevada Robards; and their daughter, Mrs. Dawson. All three were hired as co-managers with the understanding that Dawson would specialize in sales and accounting work for the hotel. The Robards and Dawson were all fired in about a month's time because, according to Bennion, they ignored his direct orders to avoid dealing with Andy Castle, another witness at the hearing. At this time Castle was the executive director of the San Mateo Hotel and Restaurant Owners Association (hereafter the Association). In addition to engaging in the usual professional and trade activities such as lobbying the state legislature for favorable laws and promulgating favorable publicity for its members, the Association, through Castle, also engaged in collective bargaining with certain unions representing bargaining units of employees at the various member hotels and restaurants in the area.

Like Wingo before them, the Robards joined the Association contrary to the direction of Bennion. After their termination, Dawson implored Bennion to give her and her parents another chance. Eventually, as the Robards were in the process of packing their possessions, Bennion relented and agreed to give all three managers a second chance. In 1981, the Robards and Dawson were again fired by Bennion. This discharge, occurring in May, was permanent and was for alleged thefts from Bennion.

Neither Mr. nor Mrs. Robards nor their daughter testified. Nor did Wingo. However, the gist of this case concerns the relationship between Respondent and Locals 340 and 856. To resolve that question it is necessary to analyze the relationship between the Robards and Bennion and between the Robards and Castle who negotiated the two contracts in issue which Bennion is alleged to have repudiated and failed to abide by. But first some additional preliminary facts will be helpful.

Over 20 years ago, Respondent's original owners joined the Association. When the business was sold to Bennion and Garr, the latter continued membership. Membership in the Association was of two types, an "A" or "B." An A membership includes labor relations work such as the negotiation of collective-bargaining agreements and the administration of grievances. Membership in B, costing 25-percent less dues per year, does not have this feature but covers various other benefits. When Castle negotiated a collective-bargaining agreement for members of the Association, he usually obtained a signed authorization from owners or managers of member businesses. He then tendered this document to the union with whom he was negotiating. Castle's personal income consists of 95 percent of the dues paid to the Association by its members.

2. Culinary Workers Local 340

In September 1976, Wingo signed an authorization for Castle to bargain with Culinary Workers Local 340 on behalf of Respondent. According to Bennion, this was done in violation of direct orders given to Wingo not to associate with Castle. Similarly, Bennion had told Castle that Respondent would not be joining the Association.

At some point during negotiations, late 1976 or early 1977, Castle tendered to Val Connolly, secretary-treasurer of Culinary Workers Local 340 and a member of the union negotiating team, a copy of Wingo's authorization. The Union relied on the representation of Castle that he was representing Respondent and on the signed authorization given to it.

On February 2, 1977, Bennion sent a letter to Castle which the latter received on February 7, 1977. It reads as follows:

> San Mateo Hotel-Motel Assoc.
> San Mateo, Calif.
>
> Gentleman:
>
> You are advised the Hillsdale Inn does not authorize or delegate to you, members or agents, any authority to act in our behalf for any purpose.
>
> You have no rights of agency, delegation or representation.
>
> If we are now a member of your association which I doubt, this is notice of immediate cancellation to your association and all or any relationship which might exist.
>
> Yours truly,
>
> Hillsdale Inn
> S.H. Bennion, Owner
> /s/ S.H. Bennion
>
> Received San Mateo Hotel-Motel Assoc.
> By: /s/ S.F. Castle - 2/7/77 [Resp. Exh. 2]

Castle considered the letter ineffective to withdraw Respondent from negotiations which had then been in progress for several months.[3] However, Castle apparently construed the letter as sufficient for Respondent to leave the Association, as he testified that a member could withdraw from the Association at any time.

Bennion sent a second letter out on February 2, 1977. This letter reads as follows:

> San Mateo Bartenders &
> Culinary Union
> Wells Fargo Bank
> 100 Fourth Ave.
> Post Office Drawer D
> San Mateo, Calif. 94402
>
> Gentleman:
>
> Be advised the Hillsdale Inn is not represented by anyone, under any conditions with relationship with your union except the writer below.
>
> No other person is authorized to act in our behalf as an agent, representation [sic] or delegated effective immediately.
>
> Your truly,
>
> Hillsdale Inn
> S.H. Bennion, Owner
> /s/ S.H. Bennion
>
> Certified
> Return Receipt Requested
> C C San Mateo Hotel-Motel Assoc. [Resp. Exh. 4.]

This letter was improperly addressed, however. It was sent to the depository for the union trust fund generally used only for receipt of checks. The trust funds themselves, with an identity separate both from the depository and from the Union, were located in the basement of the union office at 114 South B Street, San Mateo, California. Despite Connolly's candid testimony that it was not uncommon for the depository, the trust fund office, or the Union to receive mail intended for one of the other entities, and his additional testimony that the ordinary business practice was to convey the misaddressed correspondence to the proper party, he also testified that he did not receive Bennion's letter of February 2, 1977, nor was he otherwise aware of its contents. I credit the testimony of Connolly and find that neither he nor any officer of the Union was aware of the letter or its contents. I rely on Connolly's demeanor and find that subsequent events to be stated below were entirely consistent with his lack of knowledge of the letter.

In any event, on February 22, 1977, the Association, on behalf of Respondent and its other members, executed a collective-bargaining agreement with Culinary Workers Local 340. (G.C. Exh. 10.) Said agreement was effective retroactively to January 1, 1977, and terminated on December 31, 1981. In March 1977, Wingo was replaced by the Robards and their daughter.[4] Like Wingo, the Robards were given explicit instructions from Bennion not to join the Association nor to deal with Castle. Like Wingo, the Robards completely disregarded these instructions—even after having been fired once for disregarding Bennion's orders. Thus, on April 15, 1977, Robert Robards signed an authorization permitting Castle to represent Respondent in negotiations with Culinary Workers Local 340. (G.C. Exh. 14.) Not only did the Robards join the Association, contrary to Bennion's manifest orders, but they also actually participated in and maintained a high profile in the Association *vis-a-vis* Culinary Workers Local 340. For example, in early 1979, they retained a lawyer named Cooper to settle a dispute with Local 340 regarding shortages in payments by Respondent to Local 340's health and welfare fund. These payments were required to be made pursuant to section 32, pages 40–42, of the colletive-bargaining agreement effective January 1, 1977. (G.C. Exh. 10.) On April 9, 1979, Mrs. Robards sent a check to Local 340 for $2,000 in full settlement of the shortages. (Local 340 Exhs. 5a and b.)[5]

Other examples exist of the Robards' participation in administering the agreement. In early 1980, Mrs. Robards sat on an adjustment board established pursuant to section 21, pages 13–15, of the collective-bargaining agreement referred to above. The purpose of this board was to resolve grievances. (Local 340 Exh. 6.) Finally, again in early April, the Robards permitted the Local 340 business agent to file grievances or claims pursuant to the existing contract. (Local 340 Exhs. 2, 3, and 4.)

In mid-1980, Culinary Workers Local 340 and Association jointly agreed to an early reopener on the existing contract. Certain revisions between the parties were agreed upon. Then on August 1 Castle, on behalf of the Association, sent the following notice to its members:

> To: All Assosiation [sic] Members with Collective Bargaining Agreement with Local Union #340.
>
> Dear Member:
>
> The Board of Directors of the Association at their meeting held July 29, 1980 authorized your Executive Director, Andy Castle, to renegotiate the current collective bargaining agreement with Local Union #340 and to extend the contract. Such contract and extension to be subject to vote and approval of the membership of the Association. The Board felt that this action was in the best interests of the members of the Association and would be beneficial to our members.
>
> A meeting of the members will be held on Monday, August 18, 1980 at the Villa Hotel at 2:00 p.m. for the purpose of ratifying the renegotiated contract. If the contract is not approved by the majority of the

[3] I agree with Local 340's claim, br. p. 9, that Castle's action in ignoring Bennion's letter for purposes of negotiation was entirely proper. Once multiemployer negotiations have begun, an employer cannot withdraw authorization absent mutual consent or special circumstances. *Retail Associates*, 120 NLRB 388 (1958).

[4] No further mention of Dawson will be made as she plays no role in the critical events of this case.

[5] Before the Robards hired Cooper, they asked for and received authorization from Bennion to do so. They also told Bennion that Cooper had been recommended by Castle. Finally, Bennion authorized Cooper to settle the dispute for $2,000. I do not credit Bennion's claim that he authorized payment without knowing the details of the dispute.

members present at this meeting the present contract will continue as is until its expiration date.

The Board of Directors also approved that any members may withdraw its authorization to the Association to bargain for such member if the member notifies the Association in writing by Friday, August 15, 1980 of this intent.

As you are aware the Association has continiously [sic] attempted to serve the best interests of its members throughout the years and I believe that this action will serve such interests of the industry and all of our members.

/s/ Daniel McHale
President
/s/ Kenneth Tehaney
Vice President
/s/ Louie Frutschi
Secty/Treasurer
/s/ Joe Greenbach
Villa Hotel [G.C. Exh. 15.]

Mrs. Robards received a copy of this notice on August 6 as indicated by a signed receipt from the U.S. Post Office. (G.C. Exh. 15, p. 2.)

By the terms of this notice, association members were given 2 weeks to revoke their authorizations to bargain. On August 14, members were given an additional 2 weeks to withdraw authorizations. (G.C. Exh. 16.) Neither the Robards nor anyone else from Respondent attempted to withdraw his authorization during the specified time. Moreover, on September 2, Mrs. Robards attended the ratification meeting. (G.C. Exh. 17.) While it cannot be stated how Mrs. Robards voted, or even if she voted, it is known that the new contract was ratified by the members. The new contract between the Association and Culinary Workers Local 340 was dated November 4, and was effective between September 15 and December 31, 1983. (G.C. Exh. 9.)

On behalf of Culinary Workers Local 340 Connolly, too, had sent a letter dated September 3 to members asking them to attend meetings to learn of the proposed new contract. In the letter Connolly listed the names of certain establishments which had earlier negotiated independent agreements with the Union or were expected to sign "me-too" agreements. (Local 340 Exh. 9.) Based on the contents of the letter, the testimony of Connolly, and other factors in this case, I find that Culinary Workers Local 340 believed that the Association was representing Respondent during the negotiations on the new agreement. During the summer of 1981, Bennion, through his new manager, Burns, stopped compliance with the current agreement. Culinary Workers Local 340 then filed these charges with the Board.

3. Teamsters Local 856

For the past 10–15 years, Teamsters Local 856 has represented a unit of front desk and clericals at Respondent. For the past 10 years, the business representative of Local 856 assigned to Respondent has been Joseph Hurley, a witness at hearing. Over the year, Hurley has participated in negotiating three separate agreements with the Association representing, among others, Respondent. One of these agreements, between 1974–77, is in evidence. (G.C. Exh. 2.) All health and welfare trust fund payments pursuant to this agreement were paid by Respondent.

Sometime in 1977, Teamsters Local 856 began negotiations with the Association relative to another contract. Castle told Hurley that Respondent had dropped out of the Association and that he was not representing it. Moreover, on February 2, 1977, Bennion had mailed a letter to Local 856 which reads as follows:

Teamsters Local 856
Wells Fargo Bank
498 Valencia Street
San Francisco, Calif. 94103

Gentlemen:

Be advised the Hillsdale Inn is not represented by anyone, under any conditions with relationship with your union except the writer below.

No other person is authorized to act in our behalf as an agent, representation [sic] or delegate effective immediately.

Yours truly,

Hillsdale Inn
/s/ S.H. Bennion, Owner

Certified
Return Receipt Requested
CC San Mateo Hotel-Motel Assoc. [Resp. Exh. 2.]

Like the letter of the same date sent to the Culinary Workers, this letter was also misaddressed.[6] It too went to a bank which functioned as a depository for the Teamsters health and welfare funds. These funds were independently administered by a company called San Francisco Administrators, Inc., located at One Hallidie Plaza, San Francisco, California. An Official of that company named Knight testified that the misaddressed letter of Bennion was forwarded to his company by the Wells Fargo Bank. Then another employee of San Francisco Administrators named Susie Gin testified that she kept the original of the Bennion letter and forwarded a copy to the Teamsters office on Fulton Street, "Attn: Mary Bohm." Gin called Mary Bohm about the Bennion letter approximately 1 month later. Bohm told Gin that the Teamsters business agent was working on it. Gin continued to bill Respondent's account, but did not receive timely payments. I credit the testimony of Gin and find that Teamsters Local 856 did receive Bennion's letter of February 2, 1977.[7] I also credit the testimony of Hurley that at all relevant times he personally had no knowledge of the letter in question. Hurley did know, however, by mid-1977 that Respondent was no longer in the Association based on the notice conveyed by Castle. From time to time during the course of negotiations, Hurley consulted with the Robards and the Robards told

[6] Bennion obtained the addresses from the checks that Respondent had been mailing to the trust funds.

[7] I note that Mary Bohm was still employed by Teamsters Local 856, but was never called to testify.

him that Respondent would accept the contract agreed to by the Association. Hurley described this type of arrangement as a "me-too" agreement. Indeed, when Local 856 struck the Association's member hotels between August 1 and 15, Respondent was not struck because the Robards had stated they would accept the master agreement.

In mid-August 1977, Local 856 reached agreement with the Association. When Hurley took the contract to the Robards, they reneged on their agreement to sign it. Hurley promptly filed charges with the Board in Case 20–CA–13671. Upon receiving notice of the charges, the Robards asked for and received permission from Bennion to retain attorney Cooper, the same attorney used later to settle a dispute with the Culinary Workers. Before receiving permission to retain Cooper, the Robards explained to Bennion that the lawyer had been recommended by Castle.

In any event, Cooper agreed to settle the outstanding charges and on June 5, 1978, entered into a settlement agreement with Teamsters Local 856. In this agreement, signed by Robert Robards, "Gen. Mgr.," Respondent agreed "to bargain collectively in good faith" with the Teamsters, and, "if an understanding is reached, embody it in a signed agreement." (G.C. Exh. 23.) Subsequently, the parties did in fact enter into an agreement executed on November 30, 1978, effective between October 1, 1978, and June 30. Both sides signed a document [Robert Robards for Respondent] captioned "Collective Bargaining Agreement." (G.C. Exh. 4.) In essence, the parties agreed to accept the contract reached between Teamsters Local 856 and the Association. In addition, Respondent agreed to maintain certain health and welfare benefit payments—to Blue Shield through December 30, 1978, and, effectively January 1, 1979, to the Local 856 health and welfare plan. Respondent observed the terms and conditions of the contract, including payments to the Union's health and welfare plan.

Prior to expiration of this contract, Castle told Hurley that Respondent had joined the Association once again. In April, a Teamsters official sent notice to Respondent and other signatories to the prior contract that negotiations on a new agreement were desired. (G.C. Exh. 5.) Negotiations formally began in May. On June 30, Castle tendered to the Teamsters a list of association members for whom he was authorized to negotiate a new agreement. The name of Respondent, followed by the signature of Nevada Robards, was on the list. (G.C. Exh. 6.) A copy of the actual authorization signed by Mrs. Robards on June 10 was also given to Teamsters representatives (G.C. Exh. 7.) Before formal agreement was reached, Castle held meetings with representatives of member businesses to report on the progress of negotiations. One such meeting, held on Respondent's premises on June 30, was attended by Nevada Robards. (G.C. Exh. 18.) Another meeting held at the association offices[8] on July 16 was also attended by Mrs. Robards. (G.C. Exh. 19.)

[8] At that time, the association offices were located on Respondent's premises. How and when Castle moved there will be explained below.

In late August, Teamsters Local 856 and the Association reached agreement on a new collective-bargaining agreement effective July 1 through and including June 30, 1983. (G.C. Exh. 8.) Pursuant to that agreement, Hurley worked with Castle and the Records to resolve occasional grievances that arose. In July 1981, Hurley received information that Respondent has ceased making pension and trust fund contributions. Hurley went to Respondent in early July and found that the Robards were not longer employed there. Rather, Burns, who did not testify, was the new manager. Burns denied that Respondent was bound to a contract signed by the Robards. Hurley then went to find Castle at his office on the hotel premises. Castle was not in then, but later stated by telephone that Respondent again had dropped out of the Assocation and that Respondent had canceled the Association's office lease. At this point, Teamsters Local 856 filed charges with the Board.

B. *Analysis and Conclusions*

1. Preliminary observations

This unusual case raises many questions regarding the relationship between Castle and the Robards which need not and, indeed, cannot be answered on this record.[9] However, it is unnecessary to dwell on these matters since the record is more than adequate to make a fair decision on the issues presented. The primary issue concerns the extent of the apparent authority[10] possessed by

[9] For example, Castle, who was repeatedly told by Bennion to stay away from the hotel, moved the Association's offices there in November 1978 paying $300-per-month rent. (Resp. Exh. 7.) Castle claimed that he could not recall if there was a written lease, testimony I am inclined to disbelieve. Castle's accounts receivable ledger was received into the record and reflects odd payments of dues by the Robards. On November 14, 1977, Bennion asked for a refund of $400 paid to Castle by the Robards "in error" as association dues. (Resp. Exh. 5.) Castle did refund the $400, but on December 1, 1977, and March 1, 1978, Castle continued to bill Respondent for quarterly dues. Then on March 23, 1978, Robert Robards, "General Manager," wrote to the Association dropping membership in the Association in accord with the wishes of Bennion. (G.C. Exh. 13.) Thereafter, Castle approved the chargeoff of the $250 dues and owing for the two past quarters. Then in mid-November when Castle moved into Respondent's premises the Robards rejoined the Association and, after paying back dues of $500 by check, paid subsequent quarterly dues in cash. The Robards were the only association member to pay dues in case. Allegedly, the Robards rejoined the Association as part of the transaction involving the lease of office space to Castle. That is, Castle allegedly told the Robards that he just would not feel comfortable moving into the Hillsdale Inn if it continued as a nonmember of the Association. How the Robards and Castle expected to conceal both the lease of space and Respondent's reentry into the Association from Bennion is not clear. Indeed, Bennion did learn of the office lease in 1979 but did nothing about it for about 2 years.

[10] "Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons." *American Society of Mechanical Engineers v. Hydrolevel Corp.*, 102 S.Ct 1935, 1942, fn. 5 (1982), citing Restatement (Second) of Agency § 8 (1957). Put differently, "Apparent authority results when the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he purported to have." *Hiney Printing Co.*, 262 NLRB 157, 158, fn. 6 (1982) (cases cited).

Robards and by the Association.[11] I begin with Respondent's answer, paragraph 5 (G.C. Exh. 1(g)). There, Respondent admits that during 1980 Robert and Nevada Robards were comanagers and supervisors. However, Respondent denies that the Robards were agents within the meaning of Section 2(13) of the Act. I first find that the Robards were statutory supervisors during their entire tenure at Respondent from early 1977 through their termination in 1981. During this period there is no evidence that the duties of the Robards changed in any way. In addition, I find that during their entire tenure the Robards were also agents of Respondent.[12] As agents, the Robards generally had real authority to bind Bennion. Indeed, Bennion testified that he specifically delegated to the Robards the duty to hire good people, to set wage scales, and to enter into contracts for employee insurance coverage. Moreover, because Bennion resided in another State and made only periodic visits to the hotel, it is reasonable to find, as I do, that the Robards were responsible for the day-to-day operations of the hotel.

2. Did the Robards have apparent authority to join the Association

Bennion made a specific limitation on the Robards' real authority: they were not to join Castle's Association. Indeed, shortly before they were hired, Bennion sent out three letters on February 2, 1977; one to Castle and the others to the Charging Party Unions. (Resp. Exh. 1, 2, and 4.) Bennion gave copies of these letters to the Robards after they were hired. For now only the letter to Castle is important. It is undisputed that Castle received this letter. It is also undisputed that the Robards joined the Association just a few weeks after they were fired. (G.C. Exh. 14.) In so doing, they acted contrary to the express orders of Bennion; when Bennion became aware of the Robards' disobedience, he fired them. Bennion's decisive and forthright act was diluted considerably by his subsequent behavior. First, within a few days, he rescinded the termination of the Robards. Next, he sent a letter to Castle which created ambiguity in just what Bennion desired. The letter reads as follows:

> April 25, 1977
>
> Restaurant & Hotel Owners Assn.
> 3914 So. El Camino Real
> San Mateo, CA. 94403
>
> Dear Mr. Castle:
>
> Regarding an authorization dated April 15, 1977, signed by Mr. Robert Robards in behalf of the Hillsdale Inn, copy enclosed.
>
> Please refer to my letter of February 2, 1977, which you signed receipt of, and shows the writer as owner of the Hillsdale Inn.
>
> It will be necessary for the writer and owner to sign an authorization contract, and the instrument of April 15, 1977 carries no authority for the Hillsdale Inn.
>
> If you will forward [sic] a blank authorization form, the writer will consider the effect of our position in your Assn. In the meantime, my February 2, 1977 letter is in full accordance with ownership's position at this time.
>
> Sincerely,
>
> /s/ Sam H. Bennion
> Owner, Hillsdale Inn, San Mateo, CA. [G.C. Exh. 21]

Meanwhile, Castle's actions were equally unclear. Notwithstanding Bennion's February 2, 1977, letter and his oral statements to Castle, the latter had continued to bill Respondent for dues, including the March 1, 1977, quarter. On June 1, 1977, Castle's bookkeeper sent a note to Castle asking for authority to cancel the quarterly dues of $125. (Resp. Exh. 6.) Castle agreed to this, just as he agreed to Bennion's later demand to refund the $400 in dues payments made by the Robards on or about November 1, 1977. Other than to demand a refund and to reiterate his manifest intent to Castle not to have the Hillsdale Inn become a member of the Association (Resp. Exh. 5.), Bennion did not apparently discipline the Robards for this their second offense. Bennion's letter to Castle of November 14, 1977, demanding the $400 refund was followed on March 23, 1978, by a letter to Castle from Robert Robards canceling membership in the Association. (G.C. Exh. 13.)[13] Yet, as stated above, in November 1978 Castle moved the Association into the Hillsdale Inn and, contemporaneously, the Robards rejoined the Association.

I note that associations such as Castle's have been generally favored by the Board and the courts. As stated in *NLRB v. L. B. Priester & Son*, 669 F.2d 355, 360 (5th Cir. 1982):

> The prevalence of multiemployer bargaining is attributable to the advantages it offers employers and unions . . . . Each side may be able to obtain an improved bargaining position, more reliable information on competitive conditions, and the opportunity for less frequent and less costly negotiations. The enhanced stability in labor-management relations that may result is also a pronounced objective of national labor policy.

The court went on, however, to caution that "[m]ultiemployer bargaining units are viable only if

[11] In light of the repeated directives from Bennion, the Robards lacked real or actual authority to join the Association. Since they could not delegate to Castle any greater authority than they themselves possessed, Castle possessed, if anything, only apparent authority to negotiate with the Unions.

[12] In a Board-approved decision, Administrative Law Judge Burton Litvack stated flatly, "[A]n employer's supervisors are also its agents." *Burnup & Sims*, 256 NLRB 965, 974 (1981), citing *Laborers Local 478 (International Builders of Florida)*, 204 NLRB 357 (1973). In another Board-approved case, *Westward Ho Hotel*, 251 NLRB 1199, 1207–08 (1980). Administrative Law Judge Litvack discusses the concept of "general agency." As shown above, the Robards from time to time described themselves as "general managers." To the extent it is necessary to make the distinction in this case, I find that the Robards were general agents of Respondent. However, I will refer to them in the text of this decision only as "agents."

[13] It is unclear why Robards wrote this letter some 4 months after Castle had refunded the $400 in dues paid by the Robards earlier.

stable." Stability in labor relations can be achieved in this case through application of certain rules to the facts of the instant case. For example, in *Longshoremen ILWU (Sunset Line & Twine Co.)*, 79 NLRB 1487, 1509 (1948), the Board stated:

> A principal may be responsible for the act of his agent within the scope of the agent's general authority . . . even though the principal has not specifically authorized or indeed may have specifically forbidden the act in question. It is enough if the principal actually empowered the agent to represent him in the general area within which the agent acted.

In this case, I find that the Robards had apparent authority to bind Respondent to the Association. While it could be argued that Castle had actual knowledge of the limitations of authority imposed by Bennion on the Robards, a preponderance of the objective evidence indicates to me that in November 1978 Castle could properly have relied on the apparent authority of the Robards to rejoin the Association.

To support my conclusion above, I rely on Castle's long relationship with the Hillsdale Inn under various owners and managers as described in "The Facts." I note also the somewhat ambiguous letter that Bennion wrote to Castle on April 25, 1977 (G.C. Exh. 21.), and the failure of Bennion to discipline the Robards in November 1977 when he apparently determined that they had sent a $400 dues payment to Castle. In addition, Castle knew that Bennion would shortly become aware of his leave arrangement with the Robards and that the Robards had some reason to believe that Bennion would acquiesce in said lease, as indeed Bennion did for a considerable period of time.

Under the common law agency concept of apparent authority which applies in Board cases.[14]

> If the principal places an agent in such a situation that a person of ordinary prudence and discretion is justified in assuming that the agent is authorized to perform, in behalf of his principal, the particular act in question, and such act has been performed, the principal is bound by what his agent did.[15]

Under this principle of law, Bennion is responsible for placing the Robards in the position as managers where they joined the Association and Castle was justified in believing they were authorized to do so.

I also find in the alternative, for the same reasons discussed above, that Bennion ratified the acts of the Robards. I have read the case of *Wometco-Lathrop Co.*, 225 NLRB 686 (1976), cited by Respondent. There the Board indicated that generally mere silence by the principal is not sufficient to ratify. In this case, construing the evidence is the best light for Respondent, I conclude that, as between Bennion and Castle, the former did more than mere silence. For example, Bennion used Cooper, a lawyer recommmended by Castle, to settle separate labor disputes with two Unions involved here. Further, even if it be found that Bennion merely was silent, then the evidence is abundant that such silence was indicative of Bennion's intent to treat the Robards' conduct as authorized. Why else would Bennion have permitted Castle to remain a lessee of the hotel. Also, Bennion was receiving periodic reports from an accountant and must have either known of the Robards' membership in the Association or been on notice to investigate further. I make this finding even though the Robards were inexplicably paying quarterly dues in cash. At least their first payment was by check.[16] In *Wometco-Lathrop*, the Board found it significant that only 19 days had passed between the time the unauthorized act had occurred and the disavowal by the principal. Accordingly, there was no ratification. Here, Bennion learned of Castle's presence in the hotel sometime in 1979 and evicted him in mid-1981. I understand the issue is not ratification of the lease, but it cannot be separated from the contemporaneous rejoining of the Association.

3. Did the Association have apparent authority to bind Respondent to collective-bargaining agreements with the Unions

I have found that the Robards had apparent authority to join the Association or that Bennion ratified Respondent's membership; therefore, at all times material to this case, Respondent was a member of the Association. I next find that the Association had apparent authority to bind Respondent, one of its members, to collective-bargaining agreements with the Unions.[17] Here, too, apparent authority is all that is required. To determine whether an employer has delegated to a multiemployer unit apparent authority to negotiate a collective-bargaining agreement binding on the employer, the Board has formulated a court-approved test. The test is whether the employer has indicated from the outset an unequivocal intention to be bound by group action and whether the Union has been notified of the existence of the group and the delegation of bargaining authority to it and has assented to and entered upon negotiations with the group's representatives.[18]

In this case, as "The Facts" reflect above, these tests have been fully satisfied with respect to both Unions. The Robards, acting as agents of Bennion, participated fully in the administration of past contracts as well as those immediately at issue. Settling grievances and other labor disputes, making payments to trust funds, not opting out of the Association within the time provided, attending informational and ratification meetings, signing

[14] *Westward Ho Hotel*, 251 NLRB at 1207.

[15] *Ferro Concrete Const. Co. v. United States*, 112 F.2d 488, 491 (1st Cir. 1940).

[16] Payment of dues even under the curious circumstances present herein is a strong factor, if not determinative, in favor of membership in the Association. *Crane Sheet Metal*, 248 NLRB 75 (1980), enforcement denied 675 F.2d 256 (10th Cir. 1982).

[17] Association membership raises an inference of association authority to execute an agreement binding on an employer, but membership alone is insufficient to establish the necessary unequivocal intention to be bound in the face of evidence clearly to the contrary. *Crane Sheet Metal v. NLRB*, 675 F.2d at 259, fn. 9. In this case there was more than mere membership and less than clear evidence to show lack of intention to be bound by the Association's actions.

[18] *Crane Sheet Metal v. NLRB*, 675 F.2d at 259.

authorizations, and leasing space to Castle all indicate to me an unequivocal intention to be bound by group action. In this respect, I note that, due to the negligence of Bennion, Culinary Workers Local 340 never received his letter of February 2, 1977, while Teamsters Local 856 constructively received it.[19] Both Unions were notified of the delegation of bargaining authority to the Association and assented to it. Perhaps most clear in this case is that the Unions actually negotiated with the Association under the reasonable and good-faith belief that the Association represented Respondent.

These are only a few of the facts which I have restated to show that the Association had apparent authority to bind Respondent to contracts with the Unions. In the alternative, I find again that, if the Association lacked apparent authority to bind Respondent, Bennion ratified the actions of the Association in purporting to bind Respondent to contracts with the Unions. In support of this conclusion, I note that both Unions, through Connolly and Hurley, respectively, were aware that Castle was leasing space at the Hillsdale Inn. This fact would lead reasonable people to assume that Respondent was a member of the Association. Moreover, before repudiation, Respondent observed the terms and conditions of both contracts which are now claimed to be invalid. Bennion knew or should have known at an early date that the Robards were paying into the union trust funds and otherwise abiding by the terms and conditions of the contracts. Finally, I find that Bennion, who was a sophisticated businessman with experience in dealing with labor unions prior to 1980, knew that both Unions represented bargaining units at the Hillsdale Inn and he also knew that neither he nor Garr was dealing with the Unions. Accordingly, he must have known that his managers, the Robards, were taking care of these matters.[20] Again, Bennion's failure to make a careful investigation is compelling evidence that Respondent is bound by the contracts at issue here.

In sum, I find that, by repudiating and refusing to abide by both contracts, Respondent has violated Section 8(a)(1) and (5) of the Act.[21]

CONCLUSIONS OF LAW

1. Respondent Sam Bennion and Earl Garr, d/b/a Hillsdale Inn, a Partnership, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times relevant herein, Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, has been the exclusive bargaining representative of the employees of the employer-members of the Association, including Respondent, in the following appropriate unit:

> All classifications covered by the 1980–83 collective-bargaining agreement between Local 340 and the Association; excluding all other employees, guards and supervisors as defined in the Act.

4. At all times relevant herein, Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has been the exclusive bargaining representative of the employees of the employer-members of the Association, including Respondent, in the following appropriate unit:

> All classifications covered by the 1980–83 collective-bargaining agreement between Local 856 and the Association; excluding all other employees, guards and supervisors as defined in the Act.

5. At all times material herein the Unions have been, and are now, the exclusive representatives of all employees in the aforesaid appropriate units for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

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[19] The value of Bennion's letter is minimal when placed in the context of subsequent events as related in "The Facts" section of this Decision. But even on its face this letter could not accomplish what it purported to do. Bennion never gave an address or phone number where he could be reached and he was seldom at the hotel. If the Teamsters were to represent fairly the unit employees, it had no choice but to deal with the Robards. The alternative was to attempt to find Bennion every time a matter came up.

[20] At one point in the testimony, I asked Bennion if he wondered why his hotel was not struck by the Teamsters when most other hotels were. The following colloquy ensued:

> A. No, it is a mystery to me. I don't think we were a member of the Union then. I think the Teamsters had given up on this question of my 1977, February 2 letter. So I think they didn't renew, in my own personal opinion.
>
> * * * * *
>
> Q. So based on your 20 years of experience with the Teamsters, you think that they just would have said: "We are going to strike everybody else, but he doesn't want to be part of us any more, so we will just let him go."
>
> A. And that "We don't have a contract, because they didn't negotiate with us for a new contract." And another reason, probably, they only had three or four members in the Union that was in our building, which were the front desk people. So it wasn't a significant thing for the Teamsters.
>
> I don't really believe we had a contract when they struck.

This testimony is so inherently incredible and unbelievable I discredit it and find it supports my ultimate conclusions herein.

[21] Even if it be found that the Robards and Castle were engaged in a joint venture to defraud Bennion, my decision in this case would remain the same. Bennion was responsible for placing the Robards in the position of managers. In that position, the Robards affiliated with Castle. As between Bennion and the Unions, the latter are clearly the more innocent party. Allowing Bennion to disavow the actions of his agents at this point would clearly thwart the statutory policy of promoting industrial peace. Moreover, the actions of an agent who is clothed with authority, even when he misrepresents to third parties crucial facts pertinent to the basis or extent of his authority, may still bind the party having the duty to bargain. *American Sign & Neon Co.*, 176 NLRB 1049, 1052 (1969).

6. At all times relevant herein, Respondent was an employer-member of the San Mateo Hotel and Restaurant Owners Association.

7. Respondent is bound to a 1980–83 collective-bargaining agreement between the San Mateo Hotel and Restaurant Owners Association and Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO.

8. Respondent is bound to a 1980–83 collective-bargaining agreement between San Mateo Hotel and Restaurant Owners Association and Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

9. By repudiating and refusing to abide by said collective-bargaining agreements reached through multiemployer bargaining, Respondent has violated Section 8(a)(1) and (5) of the Act.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the foregoing findings of fact and upon the entire record of this case, I make the following:

THE REMEDY

Having found that Respondent violated and is violating Section 8(a)(1) and (5) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act, and to take certain affirmative action described herein, including the posting of an appropriate notice.

Additionally, Respondent shall be required to make its employees whole by paying all pension, health and welfare, and any other trust fund contributions, as provided in the collective-bargaining agreements described in paragraphs 7 and 8 of the Conclusions of Law, which have not been paid, and which would have been paid absent Respondent's unlawful repudiation of said collective-bargaining agreements, and continue such payments until such time as said agreement expires and good-faith negotiations culminate in a new agreement or an impasse. Any interest applicable to such payments shall be made in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[22]

The Respondent, Sam Bennion and Earl Garr, d/b/a Hillsdale Inn, a Partnership, San Mateo, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing to honor and abide by the 1980–83 collective-bargaining agreement negotiated by San Mateo Hotel and Restaurant Owners Association and Bartenders and Culinary Workers Union, Local 340, Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO.

(b) Failing to honor and abide by the 1980–83 collective-bargaining agreement negotiated by San Mateo Hotel and Restaurant Owners Association and Freight Checkers, Clerical Employees and Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(c) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Make its employees whole by paying all pension, health and welfare, and any other trust fund contributions, as provided in the 1980–83 collective-bargaining agreements described above, which have not been paid, and which would have been paid absent Respondent's unlawful repudiation of said agreements, and continue such payments until such time as said collective-bargaining agreements expire and good-faith negotiations culminate in a new agreement or an impasse.

(b) Post at its San Mateo, California, premises copies of the attached notice marked "Appendix."[23] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

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[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."